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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,525	11/19/2003	Toshiki Maeda	08009.0008	4709
22852 7:	22852 7590 07/12/2006		EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER			RHEE, JANE J	
LLP 901 NEW YORK AVENUE, NW			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20001-4413			1745	
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Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensive or term may be available under the provided and 37 cft 1:36(a). In no event, hower, may a reply be timely filled to the communication of 37 cft 1:36(a). In no event, hower, may a reply be timely filled in the provided of the communication of 37 cft 1:36(a). In no event, hower, may a reply be timely filled in the provided of the communication of 37 cft 1:36(a). In no event, hower, may a reply be timely filled of the communication of 37 cft 1:36(a). In no event, hower, may a reply be timely filled of the communication of the communic							
Examiner Jane Rhos 1745		Application No.	Applicant(s)				
Jane Ribbe 1745	Office Antion Commence	10/715,525	MAEDA ET AL.				
- The MALLING DATE of this communication appears on the cover sheet with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extentions of time may be available under the provisions of 3° CFR 1.18(h), in no event, however, may any be timely ided If NO period for reply is positive down, the maintimus statutions period will apply and will expire SK (5) MONTH'S from the mailing date of this communication. Faith to reply importation the opportunity of the provision	Office Action Summary	Examiner	Art Unit				
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DETAILED ACTION

Rejections Repeated

1. The 35 U.S.C. 102(b) rejection of claims 1-3 as being anticipated by Sunagawa et al. has been repeated for the reasons previously made in office action 11/2/2005.

Response to Arguments

2. Applicant's arguments filed 4/20/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that Sunagawa fail to teach wherein the lithium site occupancy rate is 98% or greater, Sunagawa discloses the same active material desired by the applicant which is expressed by the general formula LiX(Ni1-yCoy)1-x MzO2 (where $0.98 \le x \le 1.10$, $0.05 \le y \le 0.4$, $0.01 \le z \le 0.2$, M at least one element selected from the group of Al, Zn, Ti and Mg) (page 2 lines 55-57), therefore it is inherent that according to the Rietveld analysis, the Li site occupancy rate for the Li site in the crystal is 98% or greater. Applicant argues that the comparative examples and the examples shown in the specification have the same composition but not necessarily have the same Li site occupancy rate. However, once a reference teaching product appearing to be substantially identical is made in the basis of a rejection, and the examiner presents evidence or reasoning tending to show inherency, the burnden shifts to the applicant to show an unobvious difference. MPEP 2112 section V. Applicant has not shown an unobvious difference between the prior art and applicant's invention.

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examples shown in the specification but did not describe the difference between

applicant's invention and the prior art.

Applicant further argues that Sunagawa fail to disclose controlling the manufacturing process of its lithium composite oxide therefore would not have the same Li site occupancy rate. Applicant did not claim that the active material is created by controlling the manufacturing process of its lithium composite oxide. Also, data needs to be available that controlling the manufacturing process of its lithium composite oxide of applicant's invention differ from the lithium composite oxide of the prior art. Applicant states in the specification that comparative examples 4 and 5 that the nickel concentration was controlled thereby providing particles in the range of 4.8-16um (page 12). Sunagawa discloses the same material desired by the applicant within the particle range desired by the applicant and since, applicant teaches that controlling the nickel concentration provides the particles to be in the range of 4.8-16um thus the Li site occupancy rate for Li sites would inherently be 98% or greater as shown in applicant's specification in table 1, comparative examples 4 and 5, then Sunagawa inherently discloses the same Li site occupancy rate for Li sites.

As to the active material subjected to a washing process, the difference between the specific surface area of the active material before the washing process and after the washing process is $1.07\text{m}^2/\text{g}$ or less, Applicant argues that before and after the recited washing process is a property of the active material. Sunagawa discloses the same active material desired by the applicant which is expressed by the general formula LiX(Ni1-yCoy)1-x MzO2 (where $0.98 \le x \le 1.10$, $0.05 \le y \le 0.4$, $0.01 \le z \le 0.2$, M at least one

element selected from the group of Al, Zn, Ti and Mg) (page 2 lines 55-57) and that the specific surface area is between 0.15 to 2.0m²/g (page 3 lines 20-21), therefore it is inherent that the difference between the specific surface area of the active material before the washing process and after the washing process is 1.07m²/g or less.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service-Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jane Rhee

June 27,2006

SUPERVISORY PATENT EXAMINER